IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.1328 of 2001

1.The State of Tamil Nadu
rep. by its Chief Secretary,
Fort St. George,
Chennai-9.

2.The State of Tamil Nadu,
rep. by its Secretary,
Public (Law and Order) Department,
Fort St. George,
Chennai -9.

3.The Superintendent,
Central Prison,
Madurai.

4.The Revenue Divisional Officer,
Madurai. ... Appellants

Vs.

Pulliammal ... Respondent

Writ appeal filed under Clause 15 Letters Patent against the order dated 08.12.2000 passed in W.P.No.11231 of 1997.Presented under Art. 226 of constitution of India, praying to issue a writ of Mandamus, directing the 2nd respondent to pay Rs.3,00,000/- to the petitioner as compensation for the custodial death of the petitioner's husband.

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For Appellants : Mr.A.Arumugam
Additional Government Pleader

For Respondent :Mr.R.Malaichamy

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JUDGMENT

(P.R.SHIVAKUMAR,J.)

This writ appeal has been filed against the order of the learned Single Judge dated 08.12.2000 passed in W.P.No.11231 of 1997 directing payment of a sum of Rs.2,00,000/- as compensation to the respondent herein/writ petitioner for the death of her husband while he was in custody of the Jail Authorities.

2. The respondent herein had filed the above said writ petition W.P.No.11231 of 1997 seeking a direction against the appellants herein to pay a sum of Rs.3,00,000/- as compensation for her husband's death on 02.11.1996 while he was in the custody of the Jail Authorities after having been remanded for a prohibition offence. According to the writ petitioner, her husband was severely beaten up by the police after arresting him for an alleged prohibition offence on 09.10.1996 and the injuries caused by the police later on proved to be fatal.

3. The writ petition was resisted by the appellants herein contending that the death was due to natural cause and that there was no custodial violence and hence, the respondent/writ petitioner was not entitled to any relief claimed in the writ petition.

4. After hearing both sides, the learned Single Judge accepted the case of the respondent herein/writ petitioner and issued a writ of mandamus directing the respondents therein to pay a sum of Rs.2,00,000/- as compensation to the respondent herein/writ petitioner. The correctness of the said order is put in issue before us in this writ appeal.

5. We have heard the submissions made by Mr.A.Arumugam, learned Additional Government Pleader, appearing for the appellants and also by Mr.R.Malaichamy, learned counsel appearing for the respondent.

6. The facts leading to the filing of the writ appeal can be briefly stated thus:

The Sub-Inspector of Police, Periyakulam Police Station registered a case against Pancharaju, the husband of the respondent herein/writ petitioner on 09.10.1996 in Crime No.547 of 1996 on the file of the Periyakulam Police Station for alleged offences punishable under Section 4(1)(a) of Tamil Nadu Prohibition Act and Section 328 of the Indian Penal Code. It was alleged in the First Information Report that the deceased Pancharaju was found possessing 10 litres of I.D. arrack kept in a mud pot at about 09.00 a.m. on the said date and the police also suspected the presence of atropine in the said contraband seized from him. On the same day, he was arrested and produced before

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the learned Judicial Magistrate, Periyakulam who passed an order of remand remanding him to to judicial custody for 15 days. Pursuant to the said remand order, he was sent to the Central Jail, Madurai. While so, a letter dated 25.10.1996 addressed to the respondent herein/writ petitioner and another letter dated 28.10.1996 addressed to the brother's son of deceased Pancharaju came to be received by the above said addressees. Both the letters, purportedly written by Pancharaju, contained: (1) information as if Pancharaju was keeping good health; and (2) a request to the addressees to take necessary steps to get him released on bail. Meanwhile all on a sudden the respondent herein/writ petitioner received a telegram at about 12.20 p.m. on 02.11.1996 from the prison authorities containing a message that her husband was being shifted to Government Rajaji General Hospital, Madurai as he was not feeling well and that she could have an interview with him in the hospital if she would come there at her own cost. However, to her shock and dismay, she received yet another telegram on the very same day at 07.00 p.m. containing a message that her husband had died and that she could receive the dead body after autopsy. The respondent herein/writ petitioner later on came to know from the Casualty Mortuary Card that her husband was brought dead to the Government Rajaji General Hospital, Madurai at 08.35 A.M. on 02.11.1996 by the third appellant/third respondent. As the death of Pancharaju occurred, while he was in custody, based on the complaint of the Superintendent of Central Prison, Madurai, a case was registered on the file of J-2 Police Station, Madurai in Crime No.870 of 1996 on 02.11.1996 at 01.15 p.m. The Revenue Divisional Officer who conducted an enquiry as directed by the District Collector, submitted a report as if the death was due to pulmonary tuberculosis, a natural cause.

7. Not satisfied with the Revenue Divisional Officer's report, the respondent herein/writ petitioner filed the above said writ petition praying for the issue of a writ of mandamus directing payment of compensation. According to the respondent herein/writ petitioner, her husband Pancharaju was tortured inhumanly while he was in the custody of police and the same led to his unfortunate death. Since all her efforts to get proper compensation form the authorities proved futile, she was constrained to approach this Court by invoking its writ jurisdiction, praying for the issue of a writ of mandamus directing the appellants 1 and 2/respondents 1 and 2 to pay a sum of Rs.3,00,000/- to her as compensation.

8. The first appellant herein/first respondent filed a counter-affidavit on behalf of the appellants/respondents contending that Pancharaju on being remanded to judicial custody for 15 days on 09.10.1996, was lodged in the Central Prison, Madurai; that since he was unwell at the time of admission in the Central Prison, he was referred to the Government Rajaji General Hospital, Madurai by the Prison Medical Officer; that thereafter he was given treatment in the said Hospital as an inpatient upto 19.10.1996; that on 19.10.1996 he was sent back to prison from the Government Rajaji General Hospital

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and that on 02.11.1996 Pancharaju vomitted blood and hence, on a reference made by the Prison Medical Officer, he was removed to the Government Rajaji General Hospital, Madurai but unfortunately he died on his way to the hospital. It had also been contended that the enquiry conducted by the Revenue Divisional officer revealed absence of signs of torture or inhuman treatment; that the death was due to natural cause and that hence the respondent herein/writ petitioner was not entitled to any compensation or financial assistance from the Government.

9. The learned Single Judge, after going through the materials available on record, came to the conclusion that custodial violence had led to the death of Pancharaju and hence, directed the appellants/respondents to pay a sum of RS.2,00,000/- as compensation to the respondent/writ petitioner. The appellants have questioned the correctness of the above said direction of the learned Single Judge.

10. Advancing arguments on behalf of the appellants, Mr.A.Arumugam, learned Additional Government Pleader submitted that the learned Single Judge had failed to properly consider the implications of the contents of the letters dated 25.10.1996 and 28.10.1996 allegedly written by the deceased Pancharaju to his wife (respondent/writ petitioner) and his brother's son; that had they been properly considered in the light of the Revenue Divisional Officer's report, the learned Single Judge would have held that the death was not due to any custodial violence but due to natural cause and that hence, the order of the learned Single Judge should be set aside. According to the submissions made by the learned Additional Government Pleader, the letters dated 25.10.1996 and 28.10.1996 would give a clear indication that the deceased Pancharaju was undergoing some kind of ailment even prior to his arrest and detention and that is the reason why, he had chosen to write those letters informing his wife and brother's son that he was keeping good health and requesting them to arrange for his release on bail. According to the contention of the learned Additional Government Pleader, the contents of the letters imply previous ill-health and the same provide corroboration to the opinion of the doctors. In this regard, we have also heard the arguments advanced by Mr.R.Malaichamy, learned counsel for the respondent and paid our anxious considerations to the same.

11. It is a fact not in dispute that the deceased Pancharaju was arrested on 09.10.1996 by the police and produced before the Judicial Magistrate, Periakulam for remand in Crime No.547 of 1996 for an alleged prohibition offence and was remanded for 15 days. However, he was taken to the Central Prison, Madurai on 10.10.1996. At the time of admission into the Central Jail itself, he was found unwell and hence, the Prison Medical officer referred him to Government Rajaji General Hospital, Madurai. The referral O.P. chit contains the following particulars noted by the Medical Officer: "Unable to walk" .... "alleged to have been assaulted by police people". The chit for re-admission in the jail hospital contains the following

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particulars: "Treated as an in-patient in our jail hospital from 19.10.1996 to 30.10.1996." From 10.10.1996 to 19.10.1996 admittedly the deceased Pancharaju was given treatment in Government Rajaji General Hospital, Madurai as an in-patient. It is also obvious that he had not recovered at the time of his discharge from Government Rajaji General Hospital, Madurai on 19.10.1996. He was discharged with an observation that the patient was "ambulant", meaning capable of being removed. The same is obvious from a copy of the discharge summary available in the typed-set of papers. Even after being removed from the Government Rajaji General Hospital, Madurai to the prison hospital, he was treated there as an in-patient. Whether he was discharged on 30.10.1996 as inpatient of the jail hospital? What type of treatment was given on 31.10.1996 and 01.11.1996? - the appellants/respondents have not explained. No document is available in this regard. One undisputable fact emerging from the above said materials is that prior to 30.10.1996 during which period Pancharaju is alleged to have written letters to his wife and brother's son, he was taking treatment as an in-patient either in Government Rajaji General Hospital, Madurai or in the prison hospital. Therefore, it is quite unnatural and improbable that Pancharaju would have written those letters.

12. The learned counsel for the respondent, in this regard, contended that the deceased Pancharaju had been severely beaten up by the police before he was taken to the central prison, Madurai; that his condition continued to be unstable making the jail authorities to suspect that he might succumb to the injuries and that the jail authorities themselves could have written those letters with a view to protect themselves and the police in case the prisoner would die. There is substance in the said contention raised on behalf of the respondent/writ petitioner that the cumulative effect of all the above said factors would make unsustainable the submission of the learned Additional Government Pleader that the deceased was having ailment even prior to his arrest.

13. The very contention raised on behalf of the appellants that there was no custodial violence and that the death was due to natural cause has got to be discountenanced. The following facts also can be noticed in support of the above said view. After getting Pancharaju remanded for 15 days on 09.10.1996, he was not taken to the jail immediately. Throughout the night on 09.10.1996 he was kept in the police station and was taken to the Central Jail, Madurai only on 10.10.1996, that too, to be admitted and sent to the Government Rajaji General Hospital, Madurai for treatment immediately after admission in the prison. Why the accused was kept in the police station for the whole night when the Magistrate had not authorised police custody?. There is no answer forthcoming from the appellants. At the same time, the submission made by the learned counsel for the respondent/writ petitioner in this regard, seems to have substance in it. According to the respondent, the accused (deceased Pancharaju) had been beaten up by the police and he was found with injuries and hence, the officer

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in-charge of the local sub-jail refused to admit him in the sub-jail when the police took him to the sub-jail and demanded that he be referred to the hospital and then brought to sub-jail with a certificate of Medical Officer. But the police instead of doing it, kept the accused under their custody in the police station for the whole night and in the morning took him straight away to the central prison, Madurai. The said contention of the respondent/writ petitioner seems to be quite probable in the light of the fact that no sooner Pancharaju was admitted in the central prison, Madurai, then he was referred to the Government Rajaji General Hospital, Madurai where he was admitted as inpatient on 10.10.1996 itself. As pointed out supra, the referral O.P. chit itself makes it patent that the accused was not able to walk and he alleged that he had been assaulted by police. The same gives a clear picture that the accused had been assaulted by police and the injuries caused to the internal organs had led to his ultimate death.

14. Relying on the post-mortem certificate, final opinion of the doctors who conducted autopsy and the report of the Revenue Divisional Officer, it was contended on behalf of the appellants that medical evidence proved that the deceased had pulmonary tuberculosis and he died out of the said disease. We are unable to accept the said contention. It is true that the medical officers have certified as contended on behalf of the appellants. But the following facts will make the opinion of the doctors and report of the Revenue Divisional Officer questionable. Right from the date of admission in the Central Jail, Pancharaju was given treatment as in-patient. During the said period (10.10.1996 to 30.10.1996), the respondent/writ petitioner was not informed. Only on 02.11.996 the jail authorities chose to send two successive telegrams - one informing the writ petitioner that Pancharaju was being taken to Government Rajaji General Hospital, Madurai as he vomitted blood and the other informing her of the death of her husband. It is obvious that Pancharaju was brought dead to the Government Rajaji General Hospital, Madurai. Despite the fact that writ petitioner had been informed by the telegram on 02.11.1996 itself and that the writ petitioner was present in the hospital on 03.11.1996, Revenue Divisional Officer did not conduct inquest till 05.11.1996. As such, autopsy was conducted only on 06.11.1996 after allowing the dead body to decompose.

15. The accident register recorded by the Prison Medical Officer on 10.10.1996 contains the particulars that Pancharaju was diagnosed to have multiple injuries. It has also been noted that he informed the Prison Medical Officer that he had been assaulted by police people. In the discharge sheet, it was observed that the deceased had multiple injuries. However, in the accident register prepared for admission in the jail hospital after he was sent back from the Government Rajajai General Hospital, Madurai, it has been simply noted as if there was a contusion on the right knee. The learned counsel for the respondent would submit that the officer in-charge of the sub-jail, Periyakulam refused to admit Pancharaju in the

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said sub-jail as he was found with injuries as he had been beaten up by the police. The said submission gains strength from the statements of some of the police personnels recorded by the Revenue Officer. During inquest, they have clearly admitted that the in-charge officer of the Sub-jail, Periyakulam refused to admit him in the sub-jail as he was having some ailment. As pointed out *supra*, Pancharaju was found with multiple injuries when he was taken to the Central Prison, Madurai on 10.10.1996. An explanation was sought to be offered for the external injuries sustained by Pancharaju that he sustained an injury on the right knee as he slipped down from the steps of the bus while he was getting into the same on his way to the Central Prison, Madurai escorted by the police. But curiously the said accident was neither reported to the jail authorities nor any case was registered for the said accident. It shall be worth-mentioning that the deceased Pancharaju was found with multiple injuries and abdomen pain when he was produced at the Central Prison, Madurai by the escort police and Pancharaju also informed the Prison Medical Officer, as seen from the record, that he was assaulted by police people. It is curious to note that the police have set up a witness to a statement before the Revenue Divisional Officer to the effect that Pancharaju had been taken to the Court of Judicial Magistrate, Periyakulam on 23.10.1996 for remand extension. But the medical records are to the effect that the deceased Pancharaju was treated as in-patient in the Government Rajaji General Hospital, Madurai from 10.10.1996 to 19.10.1996 and, thereafter, in the jail hospital (here also as in-patient) from 19.10.1996 till 30.10.1996. Therefore it is quite obvious that he could not have been produced in the Court of the Judicial Magistrate on 23.10.1996 for remand extension. The appellants/respondents have not chosen to produce the order of remand. In the light of the above said circumstances, the non-production of the remand extension order shall give rise to an adverse inference against the appellants/respondents in this regard.

16. Taking into account all the above said aspects including the attempt made by the police to show that the deceased Pancharaju was hale enough to be produced in the Court of the Judicial Magistrate, Periyakulam for remand extension on 23.10.1996 which could not be true for the reasons *stated* supra, this Court comes to the conclusion that the learned Single Judge has correctly held that the death was due to custodial violence and that concerted efforts were made by the jail authorities and police to project the death as a natural death due to pulmonary tuberculosis. There is no substance in the challenge made by the appellants to the above said finding of the learned Single Judge and we are of the considered view that the finding of the learned Single Judge regarding cause of death cannot be held infirm or defective warranting any interference by us in this writ appeal.

17. There are several cases in which the Courts have repeatedly held that the State shall be liable to pay compensation in case of death due to custodial violence. It is unnecessary to refer to

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those decisions. Further more, it is not disputed that the appellants are liable to pay compensation if at all the death was the result of custodial violence. Therefore, the finding of the learned Single Judge regarding the fixation of liability to pay compensation for the death of Pancharaju due to custodial violence cannot be interfered with.

18. Regarding the quantum of compensation, the learned Single Judge has relied on the particulars found in the affidavit filed in support of the writ petition to the effect that the deceased Pancharaju was aged about 44 years and was having a monthly income of Rs.1,800/- by doing coolie work and that the deceased had left behind him the respondent/writ petitioner and three children aged below 8 years (5 years, 3 years and just 8 month) as on the date of filing of the writ petition, namely 21.05.1997. The fact that respondent/writ petitioner was aged about 40 years at the time of filing of the writ petition has not disputed. Taking note of all these aspects and particularly the fact that the respondent/writ petitioner had to maintain her three children, the learned Single Judge has fixed the quantum of compensation at Rs.2,00,000/-. We are of the view that the same is neither excessive nor unreasonable. We are also of the view that a sum of Rs.2,00,000/- awarded by the learned Single Judge is quite reasonable. Therefore, there is no scope for interference with the order of the learned Single Judge regarding the quantum of compensation directed to be paid by the appellants/respondents.

19. For all the reasons stated above, we do come to the conclusion that there is no merit in the writ appeal and the same deserves to be dismissed. Accordingly, the Writ Appeal shall stand dismissed. However, there shall be no order as to costs. During the course of argument, it was brought to the notice of the Court by the learned counsel for the respondent/writ petitioner that, out of the amount awarded as compensation a sum of Rs.1,00,000/- was deposited by the State (appellants) pursuant to a direction of this Court dated 14.09.2001 while granting stay in C.M.P.No.11847 of 2001 and that the said amount was also withdrawn by the respondent/writ petitioner. The same is also confirmed on behalf of the appellants. Hence the appellant 1 and 2 are directed to deposit Rs.1,00,000/-, being the balance amount of compensation awarded by the learned Single Judge and confirmed by us in this writ appeal, within a month from the date of receipt of a copy of this judgment. We also direct that on deposit, the said amount shall be dealt with in accordance with the direction found in the order of the learned Single Judge passed in the writ petition, in this regard.

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To

1.The Chief Secretary,
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2.The Secretary,
Public (Law and Order) Department,
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+1cc to Mr.R.Malaichamy, Advocate Sr 75750

KSJ (CO)
km/3.1.

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